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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,932	07/29/2002	Frank Luyten	522-1783	1230
21559	7590	01/04/2006	EXAMINER	
CLARK & ELBING LLP			WOOD, AMANDA P	
101 FEDERAL STREET			ART UNIT	
BOSTON, MA 02110			PAPER NUMBER	

1655

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,932	Applicant(s) LUYTEN ET AL.	
	Examiner Amanda P. Wood	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-36, 39-41, 43-47 and 49-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 29-36, 39-41, 43-47, and 49-54 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicants' response with amendments filed 5 January 2005 has been received and entered. Upon further review, a Restriction requirement is deemed necessary at this time as set forth below.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 29-30, 47, and 53, drawn to an assay to identify markers.

Group II, claims 31-32, 43, and 45, drawn to a first method to identify cells.

Group III, claims 33, 43, 45, and 51, drawn to a second method to identify cells.

Group IV, claim 34, drawn to a method to identify chondrocytes.

Group V, claims 35-36, 44, and 46, drawn to a method to monitor passage by passage cell expansion.

Group VI, claims 39 and 52, drawn to cells identified by hybridizing sets of DNA probes.

Group VII, claim 40, drawn to cells selected by detecting expression of molecular markers.

Group VIII, claims 41, drawn to an assay to predict the outcome of cell transplantation.

Group IX, claims 49 and 54, drawn to a cell culture.

Group X, claim 50, drawn to a cell culture that doesn't express ALK-1.

The inventions listed as Groups I-X do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or

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corresponding special technical features for the following reasons: markers identified by the assay of Group I are not required by any of the other Groups, therefore, there is no single general inventive concept shared by Groups I-X. For example, the method of Group II does not necessarily require markers identified by the assay of Group I. Furthermore, the methods of Groups I-V and VIII do not share the same concept or method steps. The cells of Groups VI-VII are not identified or selected by the same method steps. The cell cultures of Groups IX and X do not require the same markers, e.g., the cell culture of Group X requires that the culture does not express ALK-1, whereas there is no such limitation on the cell culture of Group IX.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even though the requirement may be traversed.

Please note that the examiner assigned to the instant application has changed. Accordingly, any inquiry concerning this communication or earlier communications should be directed to examiner Amanda P. Wood whose telephone number is (571) 272-8141. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. P. Wood
Examiner
Art Unit 1655

APW



CHRISTOPHER R. TATE
PRIMARY EXAMINER